

CENTER FOR DISABILITY ACCESS
Raymond G. Ballister, Jr., SBN 111282
Phyl Grace, Esq., SBN 171771
Christopher Seabock, SBN 279640
Mail: PO Box 262490
San Diego, CA 92196-2490
Delivery: 9845 Erma Road, Suite 300
San Diego, CA 92131
(858) 375-7385; (888) 422-5191 fax
phylg@potterhandy.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Alejandro Diaz,

Plaintiff,

v.

Target Corporation, a Minnesota
Corporation; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act;
California Disabled Persons Act;
Negligence

Demand For Jury

Plaintiff Alejandro Diaz complains of Defendants Target Corporation,
a Minnesota Corporation; and Does 1-10 ("Defendants") and alleges as
follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is
substantially limited in his ability to walk. He is a paraplegic who uses a
wheelchair for mobility.

2. Defendant Target Corporation owned and operated the Target store
("Store") located at or about 5600 Whittier Blvd, Los Angeles, California, in
April of 2012.

1 3. Defendant Target Corporation currently owns and operates the Store
2 located at or about 5600 Whittier Blvd, Los Angeles, California.

3 4. Plaintiff does not know the true names of Defendants, their business
4 capacities, their ownership connection to the property and business, or their
5 relative responsibilities in causing the access violations herein complained of,
6 and alleges a joint venture and common enterprise by all such Defendants.
7 Plaintiff is informed and believes that each of the Defendants herein,
8 including Does 1 through 10, inclusive, is responsible in some capacity for
9 the events herein alleged, or is a necessary party for obtaining appropriate
10 relief. Plaintiff will seek leave to amend when the true names, capacities,
11 connections, and responsibilities of the Defendants and Does 1 through 10,
12 inclusive, are ascertained.

13
14 **JURISDICTION & VENUE:**

15 5. This Court has subject matter jurisdiction over this action pursuant to
16 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
17 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18 6. Pursuant to pendant jurisdiction, an attendant and related cause of
19 action, arising from the same nucleus of operative facts and arising out of the
20 same transactions, is also brought under California's Unruh Civil Rights Act,
21 and the California Disabled Persons Act, which acts expressly incorporate the
22 Americans with Disabilities Act.

23 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
24 founded on the fact that the real property which is the subject of this action is
25 located in this district and that Plaintiff's cause of action arose in this district.

26
27 **FACTUAL ALLEGATIONS:**

28 8. The Plaintiff went to the Store in April of 2012, to shop and use the

1 photo kiosks.

2 9. The Store is a facility is open to the public, is a place of public
3 accommodation, and is a business establishment.

4 10. Photograph kiosks are one of the facilities, privileges and advantages
5 offered by defendants to their customers at the Store.

6 11. Unfortunately, defendants do not have accessible photo kiosks for
7 disabled customers. On the day of plaintiff's visit in April of 2012, the highest
8 operable parts of the three kiosks were too high for plaintiff to use.

9 12. The plaintiff personally encountered this problem. This inaccessible
10 condition denied the plaintiff full and equal access and caused him difficulty.

11 13. Additionally, on information and believe, the plaintiff alleges that the
12 failure to remove these barriers was intentional because: (1) these particular
13 barriers are intuitive and obvious; (2) the defendants exercised control and
14 dominion over the conditions at this location and, therefore, the lack of
15 accessible facilities was not an "accident" because had the defendants
16 intended any other configuration, they had the means and ability to make the
17 change.

18 14. Plaintiff would like to return and patronize the Store but will be denied
19 full and equal access until the defendants provide accessible photo kiosks for
20 disabled customers.

21
22 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
23 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
24 defendants (42 U.S.C. section 12101, et seq.)

25 15. Plaintiffs replead and incorporate by reference, as if fully set forth
26 again herein, the allegations contained in all prior paragraphs of this
27 complaint.

28 16. Under the ADA, it is an act of discrimination to fail to ensure that the

1 privileges, advantages, accommodations, facilities, goods and services of any
 2 place of public accommodation is offered on a full and equal basis by anyone
 3 who owns, leases, or operates a place of public accommodation. See 42
 4 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 5 a. A failure to make reasonable modifications in policies, practices,
 6 or procedures, when such modifications are necessary to afford
 7 goods, services, facilities, privileges, advantages, or
 8 accommodations to individuals with disabilities, unless the
 9 accommodation would work a fundamental alteration of those
 10 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 11 b. A failure to remove architectural barriers where such removal is
 12 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 13 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
 14 Appendix “D.”
- 15 c. A failure to make alterations in such a manner that, to the
 16 maximum extent feasible, the altered portions of the facility are
 17 readily accessible to and usable by individuals with disabilities,
 18 including individuals who use wheelchairs or to ensure that, to
 19 the maximum extent feasible, the path of travel to the altered
 20 area and the bathrooms, telephones, and drinking fountains
 21 serving the altered area, are readily accessible to and usable by
 22 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

23 17. Under the Americans with Disabilities Act, any person who owns,
 24 leases, leases to or operates a place of public accommodation must ensure
 25 that that the facilities are made available in a full and equal manner and in a
 26 way that does not discriminate. (42 U.S.C. § 12182(a).)

27 18. One manner of discrimination is to either build facilities that do not
 28 comply with the code or to fail to modify facilities, *i.e.*, remove barriers, to

bring them into compliance with the access standards. (42 U.S.C. § 12182(b)(2)(A)(iv).)

19. Photo kiosks are covered by the height/reach requirements of 28 C.F.R., Part 36, Appendix D, section 4.27, and 36 C.F.R., Part 1191, Appendix D, section 308.3, for control or operating mechanisms. If the clear floor space allows parallel approach by a person in a wheelchair, the maximum high side reach allowed shall be 54 inches.

20. In our case, the photo kiosks are located as high as 59 inches above the floor, which is higher than that allowed by law. The left kiosk's highest operable part is 59 inches. The two kiosks on the right are located 57 inches above the finish floor.

21. The Defendants are persons who own, operate, lease or lease to a place of public accommodation. As such, the Defendants are required to ensure that persons with disabilities are not discriminated against and, additionally, have specific duties to (1) ensure that all construction, alteration, or modification is barrier free and complies with the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"); and/or (2) remove all existing barriers where such removal is "readily achievable," and/or (3) to provide alternatives to barrier removal. The Defendants have failed to meet these obligations.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of plaintiffs and against all defendants) (Cal Civ § 51-53)

22. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

23. Because the defendants violated the plaintiffs' rights under the ADA,

1 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
2 Code § 51(f), 52(a).)

3 24. Because the violation of the Unruh Civil Rights Act resulted in
4 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
5 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
6 55.56(a)-(c).)

7
8 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA**
9 **DISABLED PERSONS ACT** (On behalf of plaintiffs and against all
10 defendants) (Cal Civ. § 54-54.8)

11 25. Plaintiffs replead and incorporate by reference, as if fully set forth
12 again herein, the allegations contained in all prior paragraphs of this
13 complaint.

14 26. Because the defendants violated the plaintiffs' rights under the ADA,
15 they also violated the Disabled Persons Act and are liable for damages. (Civ.
16 Code § 54.1(d), 54.3(a).)

17 27. Because the violation of the Disabled Persons Act resulted in difficulty,
18 discomfort or embarrassment for the plaintiffs, the defendants are also each
19 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
20 (c).)

21
22 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of plaintiff
23 and against all defendants)

24 28. Plaintiffs replead and incorporate by reference, as if fully set forth
25 again herein, the allegations contained in all prior paragraphs of this
26 complaint.

27 29. The Defendants had a general duty and a duty arising under the
28 Americans with Disabilities Act and the Unruh Civil Rights Act and

1 California Disabled Persons Act to provide safe, convenient, and accessible
2 facilities to the plaintiffs. Their breach of this duty, as alleged in the preceding
3 paragraphs, has caused injury and damage as alleged above.

4
5 **PRAYER:**

6 Wherefore, Plaintiffs pray that this court award damages and provide
7 relief as follows:

8 1. For injunctive relief, compelling defendants to comply with the
9 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
10 Plaintiffs are not invoking section 55 of the California Civil Code and is not
11 seeking injunctive relief under the Disabled Persons Act at all.

12 2. Damages under the Unruh Civil Rights Act and/or the California
13 Disabled Persons Act which damages provide for actual damages and a
14 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both
15 acts, simultaneously, and an election will be made prior to or at trial.

16 3. Reasonable attorney fees, litigation expenses and costs of suit,
17 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3 and Cal. Civ.
18 Proc. § 1021.5.

19
20 Dated: October 3, 2013

CENTER FOR DISABILITY ACCESS

21 /s/ Raymond G. Ballister

22 By: _____

23 Raymond G. Ballister, Jr, Esq.

24 Attorneys for Plaintiffs
25
26
27
28